

AN
ABATEMENT

Of most of the

Motions & Orders

IN

CHANCERY

And other chargeable Courts;

AND OF

The greatest part of the Charges which
may be in those hereafter:

OR,

Motions and Orders reduced from
twenty to two, and most of those to the
tenth part of the Charge, as formerly hath been.

*Written by W. Leach, for the same intent, and sendred
to the consideration as his former are.*

LONDON, Printed by E. Cotes, in the Year 1652.

AN
ABATEMENT

Of most of the

Motions & Orders

CHANCERY

And other chargeable Counts;

A AND OF

The greatest part of the Charges which
may be in those petitions.

OR

Motions and Orders reduced from
twenty to two, and most of those to the
fourth part of the Charge as formerly paid.

Witness W. Jacob, for the same intent, and intended
to the consideration of his former acts.

LONDON Printed by H. Goss in the Year 1692.

A N

Abatement of most of the Motions and Orders in Chancery, &c.



Orasimuch as in Antient times when the master Clerks of the Chancery (being in those Ages very learned in the Lawes of this Nation) did contrive all manner of speciall Writs then called master Writs very pithily, and well, seldome committing any error or mistake in any of them. And whereas also the antient Serjeants at the Law in such times did contrive and draw all speciall pleadings in like manner, and then were all suits speedily, and with so little Charge or trouble ended, as the people of this Nation did finde and perceive that they had full speedy, and equall Justice done unto them, and did sit down in quiet without multiplying suit upon suit, and turmoile themselves in trouble and discontent many years together, as hath been too often used by very many of late, since such master Clerks and Serjeants have been employed about other busineses (that is to say) such master Clerks about References, Reports and Accounts, bringing them in much greater benefit. And such Serjeants altogether, or for the most part taken up in moving and arguing at the bars of severall Courts, and pleading at tryalls at the Common Law, and hearing in the Chancery, whereby few or none can procure them to contrive any such thing: And (as it is thought) few or none of such master Clerks can tell how to contrive, or draw any thing which before by such their predecessours were in those ancient times usually done; by occasion whereof Suters in these latter times have been constrained to goe to Clerks or Attornies to have such things contrived or drawn, whereof some (who have set themselves forth highest) have been very ignorant, which many Suters being but of weak or mean judgements or capacities could not apprehend; whereby very many mistakes and errors have been committed and omitted in such things which have caused many

Suits and Causes upon Writs and Bills at Trialls to be lost, and no further proceedings thereupon to be, but the plaintiffs therein forced and compelled to pay costs to the defendants in such Suits, and divers Verdicts to be quashed and overthrowen upon matter moved or shewed in Arrest of Judgement; and also sundry Verdicts to be reversed and nullified by Writs of Errour all three of them many times the one after another, after the suiters in such actions and suits have been at very great charge, trouble and labour, and great losses in the hindrance of them in their Callings and Professions, and thereby many have spent very much, some as much as the very demand in question, before they have, or could obtain their just debts and demands; and others have been so impoverished by the means aforesaid, that they have not been of ability further to prosecute such suits for their Rights, but have given over, and lost the same, and many inconveniences and mischiefs, and such charge and trouble, and losse, have happened in overthrowing, quashing, and delaying of divers Decrees, Sentences, and Finall orders in many Courts.

And whereas of late time, most persons in possession of Messuages, Lands and Tenements, and wrongfully holding out others, have had the same by lease, or so claimed, and some of them held over their terme in the same; and many of those also (who have had the immediate right of possession of such Lands and Tenements) have had the right to the same by leases, whereby most Suits in such case have been brought, by actions of Ejectment, framed upon Leases which could not be tryed by writs of Assize, which hath been the most speedy remedy in this behalf, and Judgements given at the same Assizes, when and where the Verdicts have been found; and many times one of the parties to such Actions of Ejectment have departed this life between the day of the Tryall, and the day in the Bench, then next following, whereby all the proceedings before mentioned have fell to the ground, and the parties, their Executors or Administrators to begin anew, and by the same occasion, Writs of Assize be grown so obsolete, that few know how to proceed, as they should do in the same, and thereby most causes (which might have been prosecuted by Writs of Assize) have been begun and ended upon, and by such Actions of Ejectment which have occasioned divers of such inconveniencies and mischiefs as before are expressed. And whereas also in these latter times more light hath appeared in all manner of learning, to the severall sorts of the people of this Nation, then hath in antient times (men being learned in these times to one in those; most ordinary people then depending wholly upon the Priest in most ordinary matters) and it is hoped the people here, will more and more increase in learning and judgement. And therefore it is expected, and desired by most, that all manner of proceedings in Law should be amended, and not run into worse and worse order, as they have done of latter years.

And forasmuch as great, and most pittifull lamentations have been made to divers persons, in many places by multitudes of people (who have been troubled in Suits in the Court of Chancery, and other Courts, that many of them have been, and usually are put to divers unnecessary and excessive charges, by Registers and Burers, and writers of Orders, and sales their Deputies, Clerks and Agents in such Courts; and that divers unnecessary Orders have been made in such Courts by such Registers, and others with them before mentioned, and drawn out much longer then hath been, or is necessary, and contrary to the note, or notes by them taken upon hearing, and debating of the matter touching the same, for their own onely lucre, troublesome and burthensome to such Courts and Councell there, and hurtfull to the parties in, and to such Suits; and that there hath been such multitudes of Orders in these Suits, that very many (who have prosecuted and defended the same Suits) have given long, and much attendance, before they have procured, or could procure any Barries or Copies thereof to be made, by reason (as divers such lamentations have been) of money or rewards given, or promised to such Registers, Writers or Burers, their Deputies, Clerks, Servants or Agents to draw up such Orders, or sales stricter, or to some other sense then such Courts did truly direct and order; under colour whereof very many have complained that many honest and just Causes have miscarried, and that in the same much charge, perplexity, trouble, travell and vexation have been to resort to the Councell in such Suits, and afterwards to repaire unto, or attend with Councell, the Chancellors, Judges or Judges (who made, or pronounced the same Rules or Orders) to have the same drawn and entered according to the true sense thereof.

And whereas it hath been much complained of, that many others (who have not undergone such perplexity, trouble, toil, and vexation, before they have procured, or could procure such Orders or Rules to be drawn up according to the true sense of the Chancellour, Court, Judge or Judges, who made or pronounced the same) have been at great charges in giving large rewards to Registers and writers of Orders and Rules, their Deputies or Clerks (who have aided therein). And also whereas the like complaints and lamentations have been, that such Courts have been so full of business, that many Suits could have no proceedings there without great trouble and charge; and that divers before they have had, or could have any end of their business or Suits there, have spent as much, or more then that which they have sued for there, hath been in value; besides, that trouble, perplexity and vexation of minde for many years together; and divers others by such occasions have been quite, and others almost distressed, and many utterly undone; and that many others have given over, and left off good Causes for loss, and proceeded no further in the same, by reason of the extreme charge and trouble, which they

have not been able to undergoe after they have been brought into, and intrangled in such Courts, some against their wills. And whereas a great part of those troubles and charges have been occasioned by reason of the keeping secret and hidden all presidents in most Courts (unlesse it be in the Courts formerly of the Kings Bench, and Common Pleas, and now of the Upper Bench, and Common Bench, and Publique Exchequer at *Westminster*) in such manner, that some Suiters upon urgent occasions have often been constrained to give to Registers, their Clerks or Agents in the Court of Chancery, and such like Courts sometimes five pounds, other times ten pounds, and other great summes of Money for choise presidents upon such occasions, or otherwise have been constrained to goe to, and retain most Counsell belonging to such Courts, and give them extraordinary large Fees for the same purpose.

It is proposed to be desired that it may

Be Enacted, That no matter in arrest or stay of any Judgment, Decree, Sentence, or Finall order shall be moved, insisted upon, or given in exception, or assigned for Error against, in, or concerning any Plaint, Bill, Declaration, Information, Libell or Complaint, Presentment or Indictment, Plea, Allegation, Replication, Rejoynder, Surrejoinder, Rebutter or Surrebutter, unlesse such matter be, or shall be first shewed and delivered in wring to the party or parties, his, her, or their Attorney in the Cause, wherein such matter be, or shall be intended to be moved in arrest or stay of Judgment, or any thing therewith before mentioned, or assigned for Error, in which the matter of Error, or mistake is, or shall be, (that is to say) what may, or should be added to, or deducted from, or supplied by further instructions in any such Bill, or other proceedings therewith before mentioned, or continuance or return of Writs, or processe thereof, or entering up of Judgment, or any other thing therewith before mentioned, thereupon as certain as if the same matter or mistake were, shall, or should be amended, such Bill, Plaint, Declaration or proceedings before mentioned were, or shall be good and sufficient in the Law: So that a true Copy, or true Copies of every of the same writings wherein such matter or mistake is, or shall be delivered to, or left for such party or parties, his, her, or their Attorney in such Cause at his, her, or their dwelling house or houses, or most usuall place or places of abode by the space of two dayes next after issue, or demurrer be, or shall be joyned, or judgment acknowledged, suffered or permitted, or within six dayes next before such Decree, Sentence, or Finall order be, or shall be given, or to be given, decreed, or sentenced in, or concerning the same Cause, Action, or Suit, in which such processe or proceedings be, or shall be.

And that within three dayes after the delivery of such Copy or Copies, the party or parties against whom such matter be, or shall be intended to be moved or assigned for Error (paying unto the other party,

party, his, her, or their Councill, Clerk, or Attorney in the same Sute or Cause, who doe, or shall finde such Error or mistake, and deliver such Copy or Copies in writing of the same, three shillings for the first, and one shilling for every of the residue of those Errors or mistakes, may amend the same And that that party and parties by, or for whom such Copy or Copies be, or shall be so delivered within four dayes next after he, she, or they shall have notice of the amendment, according to such writing or writings, which be, or shall be so delivered, shall again Answer, Plead, Demur, put in Allegation, Reply, Rejoyn, Surrejoyn, Rebut, or Surrebut, as the Declaration, Bill, Plaint, or other things therewith before mentioned, doe or shall require, unless such new matter doe, or shall arise, and appear upon such amendment; that the Attorney of such party or parties neither can, nor according to the course of Law ought to Answer, Plead, or to doe any other thing as before therewith is mentioned without further instructions, and then within eight dayes onely for every forty miles distance of the habitation, or abode of the party or parties, so again to answer, (when he shall be first summoned, attached, arrested, or warranted to appear, or answer, reply, or to doe any other thing before therewith mentioned, to any Bill, Replication, or any other thing before therewith mentioned) from the place or Court where such prosecution be, or shall be. And that every one making default in any of the premises shall, or may be taken, or proceeded against for saying nothing, as for not answering, pleading, replying, or not performing any other thing therewith before mentioned, as hath been used in other cases wherein defaults have been suffered.

And that any who doe, or shall finde such error or errors, mistake or mistakes, shall have such money so to be paid, to and for his and their own benefit and advantage: And that he or they so committing, omitting, or suffering the same, shall pay the same money so for amendment to be paid out of his, or their own moneys respectively, according to the number of error or errors, mistake or mistakes, as each of them doe, or shall so omit, commit, or suffer.

And that after a Verdict, or Non-suit in any Action, Cause, or Sute, wherein such amendment be, or shall be, and Witnesses Examined, Recorded and Certified, according to the Propositions formerly published in this behalf, Judgement may, and shall be given according to such Verdict, or Non-suit the next day in bank after such Verdict or Non-suit, as of the day of giving such Verdict, or suffering such Non-suit; notwithstanding the intervening of the death of any of the parties in, or to such Action, Cause, or Sute.

And that no motion or petition shall be made, moved, or presented in, or to any Chancellour, Court, Judge or Judges in, or concerning any Sute or Cause there depending; but that first the matter to

be moved, or mentioned in such Petition, shall be put into writing, and a copy or note thereof delivered to the party complainant, Plaintiff or Demandant, Defendant or Tenant, against, or concerning whom such motion or Petition be, or shall be made, moved, preferred or delivered, or to his, or her Clerk, Attorney, or Solicitor in such Cause or Suit, or left at his, her, or their, or one of their dwelling house or houses, or place or places of abode under the hand of a Council learned in the Law.

And also that within two dayes, or some other convenient time, next after the delivery of such note or writing as aforesaid, the Party, Complainant, Plaintiff or Demandant, Defendant, Defendant or Tenant, his, or her Clerk, Attorney, or Solicitor in such Action, Cause, or Suit (in whom such note or writing be, or shall be so delivered) shall give, or deliver to, or leave as aforesaid, for the other party Complainant, Plaintiff or Demandant, or Defendant or Tenant (to whom, for whom, or on whose behalf such note or writing be, or shall be so given, delivered or left) or to his, or her Clerk, Attorney, or Solicitor an answer in writing to such first note or writing, or leave the same in writing to his, their, or one of their dwelling house or houses, or usually place or places of abode, and that each party may reply, and the other rejoyns, &c. the one party of them after the other party of them, in, or by some short convenient time in writing to be delivered, as left as aforesaid till the double of the matter be, or shall be agreed upon, and put to the question, or stand, as or in the nature of a case.

And that if either such party Complainant, Plaintiff or Demandant, Defendant or Tenant, do not consent the one party of them to the demand or request of the other of them, that then each party of them, who doth, or shall so petition, or move, (showing or expressing to the other of them, some reason in such writing, as more respectively for what cause, or reason by, or according to the former proceedings or orders it hath been, and was required and necessary that such the request of him, or her, who doth, or shall so petition, or move, ought, or should be granted) then, and not before, either of such parties may petition to such Chancellour, Judge or Judges; or to, or in such Court for his, or her demand, in such his, or her writing or note to be granted, and shew forth such note or writings on either side to be read, viewed, and considered in such Courts.

And further, that if the demand or request of such motion or petition, shall be granted or ordered against such party Complainant, Plaintiff or Demandant, or Defendant or Tenant, against whom such petition, motion, or demand is, or shall be made, (notwithstanding any thing to the contrary thereof to be alleged, or expressed in his, or her writing to be delivered, or left) that then he or she for not consenting to such petition, motion, or demand, as so putting into such note or writing, any vain or frivolous matter not material against

such refusal or demand shall be compelled to pay to the order of them the ordinary Costs, Charges, and expenses of the other of the last parties which he or she, or they shall lay out, or expend, and shall make it five days before some Judge of the Court, where the same Action, Cause or Suit be, or shall be depending, if such motion or petition be not, nor shall be granted upon some matter, for which there neither way, nor shall be any former Order, or leading Plaintiff in such case.

And that such Party (against whom such Petition or Demand be, or shall be granted, or ordered as aforesaid, or shall consist in the demand of such petition or motion of either of such parties Complainant, Plaintiff or Defendant, or Defendant or Tenant) be compelled to perform the said Petition, Order, Demand or Request which shall be so granted, ordered, or consented unto without further charge or trouble, under pain and penalty, that for not performing the same, he, she, or they refusing, or failing in performance of the same shall forfeit, lose, and pay to every person to be grieved or damaged thereby four times the value of such value to be recovered, as is mentioned in order aforesaid.

And further to prevent excessive charges and troubles occasioned by Register and Drawers, Enticers, and Writers of Orders and Rules, and their Clerks, Deputies and Agents, that such Registers, Drawers, Enticers, Clerks, Deputies and Agents shall, in and to such note or writing, write and sign their Chancellours, Court, Judge or Judges and or shall enter, or adjudge of, and concerning the same, and be strict and true in keeping, or retaining any of the matters or contents of any such notes or writings, and after the day of such parties, or any, or either of them (within convenient time) shall set, or cause to be set down in writing, under his, or her Counters hand, and deliver to such Register, or any of the names before whom him mentioned respectively, and returne, and set any part of the writing down of such Order, and not execute such Register, or such writ and before mentioned shall returne such Chancellour, Court, Judge or Judges who shall make such Order or Orders, and so alter or amend the same, according as such Chancellour, Court, Judge or Judges do, or shall sign, or write to the same, and then to enter in such manner in a book as such Register or Registers, Enticer or Enticers of Orders, his, or their Deputy, Clerk or Agent shall write, and such Chancellour, Court, Judge or Judges in like (in any case of such signing by him, or such writing or writings, with the parties names, and the day when such Motion or Petition was granted, and to lay file in an alphabetical manner, such notes or writings, together with the subscription of writing one such note or writing of such Register, or any of such persons before with him mentioned, signed by such Chancellour, Judge or Judges, for such the Chancellour of this Court, or either, or any the parties, shall be kept, and without charge, it shall be required: and that Regis-

letters, and such others before with them mentioned, may enter, and take competent pain for drawing, and copying of Orders and Rules (according to rates usually taken by Clerks for drawing, entering, and copying, wherein they have taken as much, or more pains than they in drawing, entering, or copying of such Orders or Rules) upon, and under pain and penalty that every such Register, or other party before with him mentioned, transgressing in the premises, or taking more than before mentioned, shall forfeit, lose, and pay to every party grieved or damaged, or to be grieved or damaged in the premises for every offense and default concerning the premises, forty pounds of lawfull English money to be recovered, as before is mentioned.

And that for the ease and quiet of all Courts and people that all Registers, and such other persons before with them mentioned (who have, or can come by any choice Presidents or Orders of divers natures made in several Causes of sundry natures upon solid, and mature deliberation) be desired, or required that every one of them may, and will produce, and bring in as many of them in particular, as he in particular doe, or shall know where to find, or come by to be entered together, and that a method may be kept for the ready, and easie finding of the same to be viewed by any: or that the same may be collected together, and published in such a method in print, for the purpose aforesaid, that people may not remain hood-winked and blinded of the proceedings and Causes of making Decrees and Orders in the Courts of Chancery, and such like Courts as they have been, but that they may be informed and advised in, and of the same, as well as they have been in other Courts: And that such Orders or Rules (as hereafter shall be made upon solid, and mature deliberation as aforesaid) may be brought into such Courts, and so entered, or published as aforesaid.

And that if any of such Registers, or any other before with them mentioned, doe, or shall draw up any Order or Rule contrary to the notes taken by any of them in any Court upon the matter moved, or argued, or to be moved or argued, whereupon such Order or Rule shall be made, and the same be also contrary to that which shall be pronounced in such Court, and such Chancellor, Judge and Judges (who pronounced the same) or the major part of them neither do, nor shall justify and maintain that which such Register or other party before with him mentioned shall so draw (though it be contrary to such note or notes, taken, or to be taken) that then every such Register and party before with him mentioned, shall for every time he doe, or shall so draw, contrary to such note or notes, forfeit, and lose, and pay to every party to be grieved or damaged thereby a 100 marks of lawfull English money to be recovered as aforesaid.

Whereas divers stubborn, perverse, forward, and unconscionable people, after they have been served with Writs under paine, or Warrants to appear in the Chancery, and other Courts: and there to answer to Bills exhibited

exhibited against them, have stood out Attachments, Proclamations, and Commissions of Rebellion, and process to Serjeants at Arms for many years, before they have appeared, or would appear; whereby many honest people of this Nation have been defrauded of vast summes of money by chargeable Motions and Orders, and otherwise.

It is proposed to be desired, that for remedy thereof, it may

Be Enacted, That if any person or persons hereafter, being served with a Writ or Warrant, commanding him or her to appear in any such Court, and shall not appear, but stand out an Attachment, or other proceffe, then when he or she shall be Arrested or Attached thereupon, he or she shall be kept in prison, or safe custody, untill sufficient Sureties be, or shall be put in, to and for the use of the Complainant in such Suit, not only for his or her appearance there, but that he or she shall perform the Order of such Court to be made upon the hearing of the Cause in such Court.

And that if such person or persons so served, or warned to appear; and shall not appear within two months next after such warning, or service; and the same be proved by the Oath or Affidavit of two honest Witnesses, and of good ability in Evidence, may such Court put the Complainant or Complainants in such Suit to take proof of so much as he, she, or they can, and after to proceed thereupon to hearing, as if such defendant had confessed the effect thereof; and so pronounce a default Order, and award Execution thereon; if the Complainant or Complainants in such Suit doe, as aforesaid, and put into such Court, good, able, and sufficient Sureties to make satisfaction of which such Defendant doe, or shall lose, or shall be taken from him, or her by vertue of such Execution; if after his or her appearance, and answer sufficient, and examination of Witnesses in such Court, it shall be there so considered of, pronounced, or adjudged:

T H E E N D.